



August 22, 2011

Mr. Glenn Klein
Eugene City Attorney's Office
777 Pearl Street, Room 105
Eugene, Oregon 97401

AMERICAN CIVIL
LIBERTIES UNION
OF OREGON

P.O. BOX 40585
PORTLAND, OR 97240
T/503.227.3186

Re: City of Eugene Sign Standards Ordinance

Dear Mr. Klein:

P.O. BOX 50426
EUGENE, OR 97405
T/541.345.6162

WWW.ACLU-OR.ORG
INFO@ACLU-OR.ORG

The ACLU of Oregon has recently been contacted by several individuals who have been ordered to remove political signs on their own residential or commercial property, or face enforcement actions. We have reviewed the matter and conclude that the sign standards ordinance, Eugene Code § 9.6600 *et seq.*, is legally indefensible. Unless the City of Eugene agrees to immediately suspend enforcement pending its amendment, the ACLU of Oregon intends to challenge the constitutionality of the ordinance in court.

The sign standards ordinance, and the City of Eugene's selective enforcement of the ordinance, violates Article I, section 8, of the Oregon Constitution and the First Amendment to the United States Constitution. First, the ordinance is an impermissibly content-based restriction on speech in that it allows some signs, and criminalizes others, based solely on content. Section 9.6610 includes the following content-based exemptions from the permit and other requirements of the ordinance:

- Official flags or banners of government entities;
- Contractor signs;
- Holiday decorations;
- Real estate signs; and
- Election signs, but only during the 60 days prior to an election.

Such content-based distinctions are impermissible under both Article I, section 8, of the Oregon Constitution and the First Amendment of the United States Constitution.¹ The durational restriction on political signs is especially problematic as a similar 60-day restriction on political signs was struck down in 1981.²

¹ *Outdoor Media Dimensions, Inc. v. Department of Transportation*, 340 Or. 275, 132 P.3d 5 (2006); *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250 (11th Cir 2005).

² *Van v. Travel Information Council*, 52 Or. App. 399, 628 P.2d 1217 (1981).

Second, the permit requirement is an unconstitutional prior restraint on speech. The ordinance requires anyone seeking to post a sign, even a sign expressing their own political views on their own private property, to fill out a lengthy application, pay a minimum \$169 fee, and wait an indefinite length of time while the permit is processed. Such prior restraint is unconstitutional.³

Third, and regardless of any content-based distinctions, the ordinance simply imposes too great a burden on protected political speech. As the United States Supreme Court has noted:

“Residential signs are an unusually cheap and convenient form of communication. Especially for persons of modest means or limited mobility, a yard or window sign may have no practical substitute. . . .

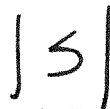
A special respect for individual liberty in the home has long been part of our culture and our law; that principle has special resonance when the government seeks to constrain a person's ability to *speak* there.”⁴

Thus, the Eugene Code’s expensive and burdensome permit requirement on this traditional and inexpensive mode of political speech is unconstitutional.

Finally, the City’s selective enforcement of the ordinance violates the Oregon and United States constitutions. Because enforcement is entirely complaint-based, and the City has refused to release any information about those complaining, the ordinance is guaranteed to be enforced primarily against signs that express an unpopular or controversial viewpoint.

The ACLU of Oregon seeks the City’s assurance that enforcement of the ordinance will be immediately suspended pending amendment to address the constitutional infirmities listed above. If we do not receive such assurance within 14 days, the ACLU of Oregon intends to pursue litigation striking down the ordinance. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "K Díaz".

Kevin Díaz
Legal Director
ACLU of Oregon

³ *The Lamar Company, L.L.C. v. City of Marietta*, 538 F.Supp.2d 1366 (N.D.Ga. 2008).

⁴ *City of Ladue v. Gilleo*, 512 U.S. 43, 114 S.Ct. 2038 (1994) (emphasis in original, internal citations omitted).